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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO._____

ARCHIE BOND, JR., et al.

Petitioners

vs.

GENERAL MOTORS CORP., et al.

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK J. GROH-WARGO
JOHN J. WARGO
WARGO, WARGO and WALTERS CO., L.P.A.
43 East Bridge Street
Berea, Ohio 44017
(216) 234-0662

Counsel for Petitioners

QUESTION PRESENTED

Whether a District Court has jurisdiction over an action pursuant to Section 301 of the Labor Management Relations Act where employees are subject to a joint arbitration panel of union and management which has an interest in the outcome of a grievance under a collective bargaining agreement.

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PETITION FOR A WRIT OF CERTIORARI
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To the Honorable, the Chief Justice and Associate Justice of the Supreme Court of the United States:

Bond, et al.,[1] the petitioners herein, pray that a writ of certiorari

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1. The parties to this suit are the

issue to review the judgment of the United States Sixth Circuit Court of Appeals entered in the above entitled case on February 7, 1983.

OPINIONS BELOW

The decision of the United States Sixth Circuit Court of Appeals is unreported and is printed in Appendix A, hereto, infra, page A-1. The opinion of the United States District Court for the

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following: Archie Bond, Jr., Eugene K. Coon, and William K. Lacek, Petitioners, and
General Motors Corporation; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local #1005, Respondents.

Northern District of Ohio, Eastern Division, is printed in Appendix B, hereto, infra, page B-1. The Journal Entry of Judgment of the United States District Court for the Northern District of Ohio, Eastern Division, is printed in Appendix B, hereto, infra, page B-27.

JURISDICTION

The Judgment of the United States Sixth Circuit Court of Appeals (Appendix A, infra, page A-1) was entered on February 7, 1983. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1254.

STATUTE INVOLVED

Labor Management Relations Act; 29 U.S.C. Section 185 (1976) (also referred to as Section 301):

Section 185. Suits by and against labor organizations.

(a) Venue, amount and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent--Entity for purposes of suit --Enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in

the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. (June 23, 1947, c. 120, Title III, Section 301, 61 Stat. 156).

STATEMENT OF CASE

Archie Bond, Jr., Eugene K. Coon, and William K. Lacek filed a complaint on June 5, 1981, in the United States District Court, in the Northern District of Ohio,

Eastern Division, invoking jurisdiction pursuant to 29 U.S.C. Section 185 (1976) (Section 301 of the Labor Management Relations Act). The plaintiffs seek compensatory and punitive damages against the defendants, General Motors Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (International U.A.W.), and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local #1005 (Local U.A.W.), alleging a breach of a Collective Bargaining Agreement. Such agreement is the "Supplemental Agreement covering Supplemental Unemployment Benefit Plan" (Supplemental Agreement covering the SUB Plan) dated September 14, 1979. The Supplemental Agreement is part of the Main Collective Bargaining Agreement between General Motors Corporation and the United Auto Workers.

During parts of 1979 and 1980, Archie Bond, Jr., an employee of the General Motors plant in Parma, Ohio, was laid off from his employment. Pursuant to the terms of the SUB Plan he received SUB Benefits totaling 95% of his regular pay until he returned to work. In September and October of 1980, more than 120 days after he was laid off, Mr. Bond was notified by General Motors, along with all employees laid off during that period, that he was required to pay back SUB Benefits he had received in 1979 and 1980 because during that time he was eligible for Trade Readjustment Act Benefits (Trade Act of 1974, 19 U.S.C. Sections 2101-2487). These Trade Readjustment Benefits were distributed by the Department of Labor for persons who were laid off due to foreign imports affecting their employment. Mr. Bond refused to pay back SUB funds he had received and General Motors forci-

bly began deducting $30.00 from his paychecks claiming Mr. Bond had been overpaid SUB funds.

Mr. Bond filed a grievance under a two-step grievance procedure under the SUB Plan with the Local Committee claiming that Article II Section 6 of the SUB Plan dealing with Benefit Overpayments did not allow General Motors to recoup SUB benefit overpayments after 120 days. (Appendix B, infra, page B-5, n.2.) The Local Committee, a joint committee of union and management, simply restated Article II Section 6 to Mr. Bond and denied his grievance. Mr. Bond appealed the decision to the second and final stage under the two-step procedure to the SUB Board of Appeals, another joint committee of union and management. Mr. Bond received a letter from General Motors signed by Beach B. Hall stating that his appeal was referred back to Parma, Ohio, for processing.

Mr. Bond never received anything more by way of an explanation and General Motors continued to take $30.00 out of his paycheck.

Mr. Bond, along with Eugene K. Coon, and William K. Lacek, filed a class action lawsuit in Federal District Court for breach of a collective bargaining agreement alleging that General Motors and the United Autoworkers violated the 120 day overpayment provision of Art. II Section 6 of the Supplemental Agreement, and that the defendant unions unfairly represented Mr. Bond in his grievance.

With the complaint, the employees filed interrogatories but both the company and union filed Motions to Stay Discovery which were never ruled on by the District Court. No discovery took place, on account of those pending motions. The unions filed a motion to dismiss in lieu of an answer which was responded to by

the employees. General Motors filed a Motion to Dismiss or in the Alternative for Summary Judgment to which the employees also responded. On August 28, 1981, the District Court issued a memorandum and order and on August 31, 1981, a final Order dismissing the complaint. The employees filed their Notice of Appeal to the United States Circuit Court of Appeals on September 30, 1981.

The District Court treated the union and company's Motions to Dismiss as summary judgment motions and granted the defendants' motions. The District Court ruled that the grievance procedure involving the Local Committee amounted to final and binding arbitration on the employees; that General Motors could recoup alleged SUB benefit overpayments prior to the date of the Supplemental Agreement (September 14, 1979) because the previous agreement was "similar"; the employees

failed to serve the Local Committee timely; and that the employees had no basis for their claim of unfair representation by the union. The District Court did find that plaintiffs Coon and Lacek could join in the lawsuit without exhausting the grievance procedure in the Supplemental Agreement because to do so would have been futile in lieu of the action taken on Mr. Bond's appeal. (District Court opinion is printed in Appendix B hereto, infra, page B-1.)

The matter came before the Sixth Circuit on the employees' Notice of Appeal challenging the District Court's dismissal of the case in granting General Motors' summary judgment motion. The Court of Appeals after the filing of briefs, appendix, and oral argument summarily dismissed the employees' claims. (Court of Appeals decision is printed in Appendix A, hereto, infra, page A-1.)

REASON FOR GRANTING WRIT

The Court of Appeals simply upheld the decision of the District Court by affirming without an opinion the District Court's decision. The District Court's decision stated that the finality of the Collective Bargaining Agreement ruled and therefore it had no jurisdiction to hear the employees' case pursuant to the Labor Management Relations Act. While the federal case law generally supports the proposition that collective bargaining grievance procedures are final and the proposition that Joint Boards can serve as arbitrators, it stretches logic to assume that a Board of Union and Management, which has the same joint interest in the outcome of the interpretation of the collective bargaining agreement, can sit as fair and impartial arbitrators. The deference to be given the finality of the arbitration procedures is not absolute and blind.

Steelworkers v. American Mfg. Co., 363 U.S. 574 (1960).

One of the grounds for setting aside an arbitrator's award is evident partiality. Office of Supply v. New York Navigation Co., 469 F.2d 377 (2d Cir. 1972). Additionally, the facts of the workers' claims here are different than most Section 301 suits. The employees are not taking a factual question before the committee in regard to a personal grievance, but are alleging that the language of Article II Section 6 of the SUB Agreement has been misinterpreted.

Federal labor policy has made a distinction in discussing the adequacy of intraunion grievance procedures. "The policy in favor of allowing the union to attempt to resolve its internal difficulties initially is not absolute, however, the underlying test is whether the available procedures are adequate and reasonable

in light of the facts of the particular case." Geddes v. Chrysler Corp., 608 F.2d 261, 264 (6th Cir. 1979).

The Courts will more closely scrutinize a grievance procedure when it involves a complex problem dealing with the employer, union, and employee members as opposed to a dispute between the union and a member. Id. The Court goes on to state that intraunion remedies are best designed to deal with internal union policy and practice and not "revocation of certain benefits and salaries, which the employees contend is a breach of their contract." Id. at 264. The employees have raised the latter issue and it is not in the legitimate interest of labor policy to coerce employees to utilize the SUB Agreement grievance procedure without any possible resort to pursuing their rights in Court. NLRB v. Marine Workers, 391 U.S. 418 (1968); Helton v. NLRB 656 F.2d 883 (D.C. Cir.1981);

Elevator Constructors Local 8 v. NLRB (D.C. Cir. 1981). Thus, the court decision that argues that the SUB Agreement's grievance procedure is absolutely controlling is without merit. Said decision pursues a line of logic which would require employees to submit their complaint to the same group they are suing, a line of reasoning which has been rejected. Glover v. St. Louis - San Francisco Railway Co., 393 U.S. 324 (1969). An arbitrator has the responsibility to provide a fair hearing to employers, union and grievants. Gross & Bordoni, Reflections on the Arbitrator's Responsibility to Provide a Full and Fair Hearing: How to Bite the Hands that Feed You, 29 Syracuse L. Rev. 877 (1978). There is the requirement that an arbitrator is to assert, "an independence of the parties in order to fulfill arbitral obligations that transcend or even conflict with the intentions of the

employer and/or union parties to the contract." Id. at 880.

The employees in such a situation --where the intraunion remedies are inadequate--are allowed to seek substantive relief through a Section 301 suit. Clayton v. UAW, 451 U.S. 679 (1981). While Clayton dealt with the principles detailing the need for exhaustion of grievance procedures to utilize Section 301 suits, its logic is applicable here: If the internal grievance procedures are not adequate, and there is no reasonable possibility that the employees' claim will be resolved by this private procedure, then employees can seek substantive relief through a Section 301 suit. Id. The employees have a valid Section 301 suit in that the Local Committee and SUB Board were so hostile as to be unable to conduct a fair hearing. When the internal union procedures are inadequate, the Court

should exercise jurisdiction. Tinsley v. United Parcel Service, 665 F.2d 778 (7th Cir. 1981). "[A]n . . . individual will not be required to go through meaningless grievance procedures where it is clear such procedures are biased against the complainant." Farmer v. Ara Services, Inc., 660 F.2d 1096, 1106 (6th Cir. 1981). The employees did exhaust their internal remedies under the SUB Agreement, but those procedures were not suited to redress their claims.

This is clearly a Section 301 suit even without an unfair representation claim because of the biased grievance procedure on this set of facts. Assuming arguendo that the Union and G.M.'s contention is correct, that the employees, since they were not represented by the Union in their grievance, cannot bring an unfair representation claim, then at the very least the employees are entitled to

a neutral forum with an impartial arbitrator or Board of Arbitrators available to make a decision in regard to an alleged collective bargaining breach. "And it cannot be said, in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so." Republic Steel v. Maddox, 379 U.S. 650, 653 (1965).

This Court should hear the employees' claim, to settle the issue of federal labor policy surrounding employee rights under collective bargaining agreements pursuant to the Labor Management Relations Act. It is the employees' contention that said Act allows them a fair and neutral forum to hear their grievance.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANK J. GROH-WARGO
JOHN J. WARGO
Counsel for Petitioners
WARGO, WARGO and
WALTERS CO., L.P.A.
43 East Bridge Street
Berea, Ohio 44017
(216) 234-0662

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States was mailed by regular U. S. Mail, postage prepaid, to Dennis M. Kelly and Janet L. Miller, Jones, Day, Reavis & Pogue, 1700 Union Commerce Building, Cleveland, Ohio 44115, Attorneys for Defendant, General Motors Corporation; and to David Roloff, Stokes & Green, 620 Leader Building, Cleveland, Ohio 44114, Attorney for Defendant Unions, this_____day of May, 1983.

FRANK J. GROH-WARGO
JOHN J. WARGO
Attorneys for Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ARCHIE BOND, JR., et al.	)	81-3609
Plaintiffs-Appellants	)	
vs.	)	ORDER
GENERAL MOTORS CORP., et al.	)	
Defendants-Appellees	)	

Before: EDWARDS, Chief Circuit Judge, ENGEL, Circuit Judge and PHILLIPS, Senior Circuit Judge.

This civil action was brought by three General Motors employees at the General Motors Parma plant against the General Motors Corporation and the International Union, Automobile, Aerospace and Agricultural Implement Workers of America. The employees alleged that General Motors breached the condition of a collective bargaining agreement and that the defendant unions breached their duty of fair repre-

sentation, asserting jurisdiction under section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185 (1976). We note that the essential dispute is over whether or not the Labor Management contract was violated when General Motors began deductions from plaintiffs' pay after each of them received payments for "adjustment assistance" under the Trade Act of 1974, 19 U.S.C. Sections 2101-2487 (1976), which said payments resulted in plaintiffs receiving in excess of 95% of their normal compensation on the job.

On review of the briefs, record and oral argument, this court finds that the actions complained of in relation to General Motors and the International and Local Unions concerned were in pursuance of Article II, Section 6 of the Company-Union contract, calling for supplemental unemployment benefits.

This Court agrees with the analysis of

the legal issues as set forth in the careful memorandum and order entered by Judge Robert B. Krupansky while acting as District Judge.

The judgment of the District Court is therefore affirmed.

ENTERED BY ORDER OF THE COURT

_____
Clerk

ISSUED AS MANDATE: March 1, 1983
COSTS: None

THE UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

ARCHIE BOND, JR., et al.	)	CIVIL ACTION NO. C81-1167
Plaintiffs	)	
v.	)	MEMORANDUM AND ORDER
GENERAL MOTORS CORPORATION, et al.	)	
Defendants	)	

KRUPANSKY, J.

This is a civil action instituted by the plaintiffs; Archie Bond, Jr. (Bond), Eugene K. Coon (Coon) and William K. Lacek (Lacek), seeking compensatory and punitive damages against the defendants; General Motors Corporation (G.M.), International United Automobile, Aerospace and Agricultural Implement Workers of America (the International) and International

Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1005 (Local 1005) charging inter alia that G.M. breached the conditions of a collective bargaining agreement and that the defendant unions breached their duty of fair representation.[1/] The Court's jurisdiction is invoked pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185.

The matter is presently before the Court on G.M.'s motion to dismiss and the International and Local 1005's joint motion to dismiss. The plaintiffs have responded in opposition.

A review of the record in the instant matter discloses that each of the plaint-

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1/ The plaintiffs' complaint is styled as a class action. However, no motion for certification has been filed and in view of the disposition of the instant action provided herein, class action status is hereby denied.

iffs is a member of Local 1005 and each is an hourly-rate employee of G.M. at G.M.'s Motor Division Plant in Parma, Ohio (the Plant). In parts of 1979 and 1980 plaintiffs were laid off from their respective jobs at the Plant.

Pursuant to an agreement entitled "Supplemental Agreement Covering Supplemental Unemployment Benefit Plan", (the Supplemental Agreement) the plaintiffs became eligible for and received supplemental unemployment benefits (SUBenefits). The Supplemental Agreement, dated September 14, 1979, is a part of the main collective bargaining agreement between G.M. and the International. See Exhibit C, Section 1 to the Supplemental Agreement.

Contemporaneous with plaintiffs' layoffs, the International filed petitions with the Secretary of Labor seeking adjustment assistance for its members pursuant to the Trade Act of 1974, 19 U.S.C.

Sections 2101-2487. The particular sections of the Trade Act relevant to the within cause provide a scheme whereby workers who have been separated from their employment because of foreign competition are guaranteed 70% of their average weekly wage during the period of separation. 19 U.S.C. Sections 2271-2322. See generally International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW v. Marshall, 584 F.2d 390 (D.C. Cir. 1978).

On May 13, 1980, the Department of Labor issued a certificate of eligibility providing in pertinent part:

> "All workers of components parts plants of General Motor Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the appendix are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

5 Fed. Reg. 35050 (1980). The Parma Plant was listed in the appendix with an "impact

date" of June 1, 1979.

Thereafter, the plaintiffs applied for and received adjustment assistance for periods of separation from their employment at the Plant. Because of the adjustment assistance received, G.M. determined that Bond and Coon had received overpayments of SUBenefits. Pursuant to Art. II Section 6 of the Supplemental Agreement, G.M. notified Bond and Coon of the overpayments and, upon their failure to refund said overpayments, began withholding amounts of their wages.2/

2/ Article II Section 6 of the Supplemental Agreement provides in pertinent part:

> Section 6. Benefit Overpayments
>
> (a) If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is

It appears, however, that with respect to plaintiff Lacek, G.M. made allowance for the amount of adjustment assistance before issuing SUBenefits to him and, accordingly, he was not required to refund any moneys received.

---

applicable; provided, however, that no repayment shall be required if the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitation shall be applicable in cases of fraud or willful misrepresentation.

(b) If the Employe shall fail to return such amount of overpayment promptly:

(1) With respect to Benefits paid from the Fund, the Trustee shall arrange to reimburse the fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits of compensation payable by the Company to the

Plaintiff Bond objected to GM's withholding of his wages and appealed to the "Local Committee" in accordance with Art. V Section 3 of the Supplemental Agreement charging that adjustment assis-

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> Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both; and
>
> (2) with respect to Benefits paid by the Company, the Company shall arrange to reimburse the Trustee for the amount of overpayment by making a deduction from any future payments payable under Letter Agreements between the Company and the Union dated September 14, 1979 or from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) otherwise payable to the Employe by the Company, or to make a deduction from compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both.
>
> The Company is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) of this subsection, and to pay the amounts deducted to the Trustee.

tance was not properly deductible from SUBenefits and that G.M. had failed to comply with the notice provisions established in the Supplemental Agreement. The Local Committee is the appointed body for hearing appeals relating to SUBenefits and consists of one member designated by G.M. and one member designated by the Union. See Art. VI Section 2(b)(7) of the Supplemental Agreement. On January 20, 1981, the Local Committee denied Bond's appeal, holding that G.M. had the right to make deductions on account of adjustment assistance and that G.M. had complied with the applicable notice provisions.

According to the terms of the Supplemental Agreement, the Local Committee's decision is final and no further appeals to the Board of Administration of the Plan (the Board) are permitted unless the Local Committee has not reached a resolution.

Therefore, Bond's attempt to appea the Local Committee's ruling was ineffectual. Plaintiffs Coon and Lacek did not attempt to appeal G.M.'s determination at any time.

Plaintiffs then initiated this action asserting in count I of their complaint that G.M. had breached the Supplemental Agreement by 1) failing to comply with the 120 notice period for the recoupment of benefits;[3/] and 2) requiring repayment of SUBenefits issued prior to September 14, 1979, the effective date of the Supplemental Agreement. In count II of plaintiffs' complaint, they charge the defendant unions with breach of their duty of fair representation, alleging that the unions did not fairly represent them and also "purposely, arbitrarily and capriciously" failed to process Bond's appeal.

3/ See text of Art. II Section 6(a) set forth at n.2 supra.

As indicated, the matter is before the Court on the defendants' motions to dismiss. However, inasmuch as matters outside the pleadings have been presented to and utilized by the Court, the instant motions shall be treated as motions for summary judgment. See Rule 12(b), Fed. R. Civ. P.

It is apparent from the foregoing recital of the factual chronology that plaintiffs Coon and Lacek have not attempted to secure relief through the procedures established in the collective bargaining agreement. Thus, initially the Court must determine whether, regarding Coon and Lacek, their failure to pursue contractual remedies bars them from seeking relief in this Court.

The law is well-settled that, in the absence of exceptional circumstances, a Court may not entertain a suit by an employee against his employer for breach of

a collective bargaining agreement until the employee has at least attempted to exhaust any exclusive procedures for redress established under the terms of the agreement. Clayton v. International Union, United Automobile, Aerospace and Agricultural Workers of America, __U.S.__, 101 S.Ct. 2088, 2091 (1981), Vaca v. Sipes, 386 U.S. 171, 184, 87 S.Ct. 903, 914 (1967); Republic Steel Corp. v. Maddox, 379 U.S. 650, 652, 85 S.Ct. 614, 616 (1965).

It was clearly the intent of the parties to the Supplemental Agreement that the appeals procedure provided therein was to be the exclusive method for resolving controversies involving SUBenefits. The Agreement provides as follows in Art. V Section 3(b)(2):

> (vi) There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the

> Trustee, and the Company. The Union will discourage any attempt of its members to appeal and will not encourage or cooperate with any of its members in any appeal, to any Court or Labor Board from a decision of the Board, nor will the Union or its members by any other means attempt to bring about the settlement of any claim or issue on which the Board is empowered to rule hereunder.

Coon and Lacek do not dispute the fact that they have failed to exhaust their contractual remedies, nor do they attempt to assert that the remedies were not intended to be exclusive. Rather, Coon and Lacek contend that the Local Committee's disposition of Bond's appeal rendered any appeal on their part futile. The law, as plaintiffs properly observe, will not compel an exercise in futility and, accordingly, employees are excused from exhausting contractual procedures when to do so would be clearly ineffective. Glover v. St. Louis-San Francisco Ry. Co., 393 U.S. 324, 330, 89 S.Ct. 548, 551 (1969).

The issues presented to the Local Committee in Bond's appeal are substantially identical to those presented in the instant suit by Coon and Lacek.[4/] Nothing in the record indicates any difference in Coon's or Lacek's position which would make their appeal to the Local Committee more effective than Bond's. Indeed, the parties to the Supplemental Agreement apparently realized that issues common to several members of the union would arise and that an appeal by one member could expeditiously settle an issue for all. Accordingly, Art. V Section 3(b)(1)(i) of the Supplemental Agreement provides in pertinent part:

4/ It does appear that the 120 day notification period which, it is alleged, G.M. did not comply with, is inapplicable to Lacek inasmuch as the amount of deductions on account of adjustment assistance benefits was computed prior to his receiving SUBenefits. This difference, however, bears no relevance to the issue of futility of the contractual procedures.

> In situations where a number of Employes has filed applications for Benefits or Separation Payments under substantially identical conditions, an appeal may be filed with respect to one of such Employes, in accordance with procedures established by the Board, and the decision thereon shall apply to all such Employes.

While the record does not reflect that Bond's appeal to the Local Committee was intended to represent other employees, the appeal nevertheless prompted a decision by the Committee on facts substantially similar to other employees--namely Coon and Lacek.

For the foregoing reasons, the Court is constrained to conclude that resort to the contractual grievance resolution procedures by plaintiffs Coon and Lacek would be futile. Thus, the Court will not require them to exhaust contractual remedies before addressing their claims.

Having concluded, in effect, that the decision of the Local Committee represents

the final resolution of plaintiffs' claims in accordance with the contractual scheme, the Court must now determine whether that ruling is binding on the plaintiffs. It can no longer be questioned that federal policy favors resolution of disputes by a method agreed upon by parties to a collective bargaining agreement. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 562-63, 96 S.Ct. 1048, 1055-56 (1976); United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 80 S.Ct. 1358 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347 (1960).

In order to further this policy, "courts ordinarily defer to collectively-bargained dispute resolution procedures when the parties' dispute arises out of

the collective bargaining process," Barrentine v. Arkansas-Best Freight System, __U.S.__, 101 S.Ct. 1437, 1442 (1981); Hines v. Anchor Motor Freight, Inc., supra at 562-63, 96 S.Ct. at 1055-56; and, absent particular circumstances, the award of the arbitrator is final and binding if the contract so provides. See e.g. Humphrey v. Moore, 375 U.S. 335, 351, 84 S.Ct. 363, 372, United Steelworkers of America v. Enterprise Wheel & Car Co., supra at 598-99, 80 S.Ct. 1361-62; Morris v. Werner Continental, Inc., 466 F.2d 1185, 1188-89 (6th Cir. 1972) cert. denied 411 U.S. 963, 93 S.Ct. 2144 (1973). Moreover, contrary to plaintiffs' assertions, a decision of a joint committee selected by the parties for definitive settlement of grievances is accorded the same degree of finality as a decision of a neutral arbitrator. See e.g. Hines v. Anchor Motor Freight, Inc., supra; Humphrey v.

Moore, supra; General Drivers, Warehousemen and Helpers, Local Union No. 89 v. Riss & Co., 372 U.S. 517, 83 S.Ct. 789 (1963).

The Supreme Court has recognized an exception to the general rule regarding the finality of contractual grievance procedures when a union has breached its duty of fair representation. Hines v. Anchor Motor Freight, Inc., supra. In Hines, the Court held that an employee could obtain judicial review of his wrongful discharge claim despite an adverse decision by an arbitration board if he could show that the arbitral process had been seriously undermined by the union's breach of its duty of fair representation. In such circumstances, the Court held, the union's breach "removes the bar of the finality provision of the contract." Id at 567, 96 S.Ct. at 1058. See also Ruzicka v. General Motors Corp., No.

78-1198 (6th Cir. June 2, 1981), Smart v. Ellis Trucking Co., 580 F.2d 215 (6th Cir. 1978) cert. denied, 440 U.S. 958, 99 S.Ct. 1497 (1979).

Thus, the foregoing authorities counsel that if, but only if, plaintiffs in the case at bar can demonstrate that the defendant unions breached their duty of fair representation and that such breach seriously undermined the dispute resolution procedure, then G.M. cannot properly raise the decision of the Local Committee as a bar to plaintiffs' claims.

In assessing plaintiffs' claims of unfair representation, the Court would note initially that "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190, 87 S.Ct. 903, 916 (1967). See also Hines v. Anchor

Motor Freight, supra at 571-72, 96 S.Ct. at 1059; Humphrey v. Moore, supra; Dill v. Greyhound Corp., 435 F.2d 231, 237-38 (6th Cir. 1970) cert. denied 402 U.S. 952, 91 S.Ct. 1622 (1971). The Court would further note that the Sixth Circuit Court of Appeals has held that mere conclusory allegations of unfair representation will not withstand a properly supported motion for summary judgment. Balowski v. U.A.W., 372 F.2d 829, 835 (6th Cir. 1967). See also Smart v. Ellis Trucking Co., supra at 318 n.3.

In the instant cause plaintiffs' complaint merely charges that by not "questioning" the actions of G.M. the defendant unions "have purposely, arbitrarily and capriciously failed to fairly represent plaintiffs according to law" and "purposely, arbitrarily and capriciously failed to process the appeal of Archie Bond, Jr. in regard to the repayment of Supplemental

Unemployment Benefits." Plaintiffs' complaint and supporting papers do little to specify the manner in which the unions failed to fairly represent them. With respect to plaintiffs' allegations that the unions failed to "question" G.M.'s practices and process Bond's appeal, it is expressly provided in the Supplemental Agreement that the responsibility for appealing decisions of G.M. regarding SUBenefits rests on the individual employee and not on the unions. See Art. V Section 3(b). Thus the union had no duty under the contract to appeal decisions regarding SUBenefits and, indeed, had no more power to compel action on the part of G.M. than plaintiffs themselves possessed. See Retail Clerks International Ass'n. v. Lion Dry Goods, Inc., 341 F.2d 715 (6th Cir. 1965). Under these circumstances it strains credulity to suggest the unions breached their duty of fair

representation by not "questioning" the very procedures to which the unions had contractually agreed.

As indicated, the action is presently before the Court on motions for summary judgment, and the standards to be applied in passing on summary judgment motions generally are applicable to cases involving alleged breaches of a union's duty of fair representation. Willetts v. Ford Motor Co., 583 F.2d 852 (6th Cir. 1978); Balowski v. U.A.W., supra. The Sixth Circuit Court of Appeals explication of the standard in relation to a claim of unfair representation in Willetts is controlling in the controversy at bar. The Court in Willetts stated:

> [T]he application of the standard for granting summary judgment in this case meant that there could be no dispute about whether appellee union's action . . . was arbitrary, discriminatory, or in bad faith. The burden of showing that there was no issue of fact concerning

> appellee union's conduct being arbitrary, discriminatory, or in bad faith as to appellant was on the [the employer and the union] since they were the parties seeking summary judgment.

Willetts v. Ford Motor Co., supra at 854.

The record in the instant matter clearly establishes that defendants have carried their burden. As heretofore explained the responsibility for appealing adverse decisions respecting SUBenefits rested solely with the employee. The plaintiffs' conclusory allegations utterly fail to reveal any indication of how the defendant unions' action or inaction was arbitrary, discriminatory or in bad faith. In sum, the Court is constrained to conclude that the record, taken as a whole, clearly demonstrates that "recovery cannot be had on any state of the evidence." Hines v. Local Union No. 377, 506 F.2d 1153, 1157 (6th Cir. 1974), rev'd in part on other grounds, Hines v. Anchor Motor

Freight, supra. Thus summary judgment in favor of defendant unions is proper and hereby granted.

Having failed to establish a breach of the duty of fair representation by the unions, the plaintiffs are bound by the adverse decision of the Local Committee holding that G.M. did not breach the collective bargaining agreement. Accordingly, G.M. is entitled to judgment as a matter of law and summary judgment is also hereby granted in G.M.'s favor.

The plaintiffs' assertion that G.M.'s actions affected SUBenefits issued before the effective date of the Supplemental Agreement does not alter the result reached above. The record in the within cause establishes that prior to the effective date of the September 14, 1979 Supplemental Agreement, another agreement, identical in all material respects, governed

matters relating to SUBenefits.[5/] Hence, assuming arguendo that G.M.'s action did affect SUBenefits issued prior to the effective date of the 1979 Supplemental Agreement, plaintiffs would nevertheless be bound by the same contractual grievance procedures. Accordingly, the preceding analysis and conclusion reached with respect to the 1979 Supplemental Agreement apply with equal force to any alleged claims relating to SUBenefits predating that agreement.

The remaining issue before the Court is raised by count III of plaintiffs' complaint. It appears that count III attempts to state a cause of action against the Local Committee. The record reveals

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5/ See Supplemental Agreement Covering Supplemental Unemployment Benefit Plan dated November 22, 1976 (attached as Annex B to G.M.'s motion to dismiss).

however that service of process on the Local Committee has not been perfected.[6/] Therefore, in accordance with this Court's Pre-Trial Order, see Bond v. General Motors Corp., No. C81-1167 Order at p. 6 (N.D. Ohio, filed June 5, 1981); any purported claims against the Local Committee are hereby dismissed.

In accordance with the foregoing, summary judgment is hereby granted in favor of the defendants G.M., the International and Local 1005. Any claims purportedly advanced against the Local Committee are hereby dismissed for failure to perfect service.

IT IS SO ORDERED.

/s/ Robert B. Krupansky
United States District Judge

6/ Indeed the Local Committee does not appear as a defendant in the caption of plaintiffs' complaint. The failure to name the Local Committee as a defendant does not, standing alone, require dismissal of plaintiffs' claim against

it, Blanchard v. Terry & Wright Co., 331 F.2d 467 (6th Cir. 1964); and the Court's dismissal rests on the more fundamental failure regarding service as explained above.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ARCHIE BOND, JR., et al.,	)	
Plaintiffs,	)	NO. C81-1167
vs.	)	ORDER
GENERAL MOTORS CORPORATION, et al.,	)	
Defendants.	)	

In accordance with the Memorandum and Order filed herein on Aug. 28, 1981,

IT IS ORDERED that the complaint herein is dismissed at plaintiffs' costs.

ROBERT B. KRUPANSKY
United States District Judge